

1992

# Salt Lake City Corporation v. Ronald Scott Leahy : Brief of Appellant

Utah Court of Appeals

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Marsha S. Atkin; Attorney for Respondent.

Ronald Scott Leahy; For Appellant.

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UTAH COURT OF APPEALS  
BRIEF

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IN THE UTAH COURT OF APPEALS  
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SALT LAKE CITY CORPORATION,  
Plaintiff/Appellee

v.

RONALD SCOTT LEAHY,  
Defendant/Appellant

)  
(  
)  
(  
)  
(  
)

Case No. 920382-CA

Priority No. 16

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BRIEF OF APPELLANT

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Appeal from Order of  
the Third Circuit Court, Salt Lake Department  
the Honorable Sheila K. McCleve  
presiding,  
finding Defendant to be liable to the Plaintiff  
by virtue of the ownership of his car  
Judgment date April 22, 1992  
Notice of Appeal filed May \_\_, 1992

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SEP 18 1992

Mary T. Noonan  
Clerk of the Court  
Utah Court of Appeals

IN THE UTAH COURT OF APPEALS  
---ooOoo---

SALT LAKE CITY CORPORATION,	)	
Plaintiff/Appellee	(	
	)	Case No. 920382-CA
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Pursuant to Rule 24 of the Utah Rules of Appellate Procedure, the appellant, hereby submits the following brief.

### STATEMENT OF JURISDICTION

Jurisdiction of this matter is appropriate in this Court pursuant to Rules 3 and 4 of the Rules of Appellate Procedure and the Utah Constitution. Jurisdiction is further appropriate because this matter involves issues of a Constitutional nature which is ripe for decision by this Court.

### ISSUES PRESENTED

#### LEGAL AND CONSTITUTIONAL ISSUES

1. Utah Code Annotated, 78-6-10 (1992) is unconstitutional in that it violates the Defendants right to seek redress through the Court system and gives Plaintiffs an unfair advantage by allowing them the ability to collect monetary damages, under an unconstitutional ordinance, simply because they may pick the forum in which to proceed.

2. Salt Lake City Ordinances 12.56.530 and 12.56.560 are unconstitutional in that establish a rule of evidence binding upon the Court and the City has no real or express power to enact such ordinances and the Court erred in ruling that Leahy was liable pursuant these ordinances.



3. An ordinance which creates liability on the basis of ownership of a car does not provide adequate due process, notice of wrongdoing sufficient to inform the person to be held liable, and opportunity to defend or correct and is therefore constitutionally defective.

#### Standard of Review

Issues 1, 2 and 3, are legal issues asking the Court to determine the correctness of the lower Court's legal determination and this Court must therefore review these issues under the "correction of error" standard, giving no deference to the Lower Court's conclusions of law. (State v. Steward, 806 P.2d 213, (Utah App. 1991); State v. Johnson, 771 P.2d 326, (Utah App. 1991)).

#### EVIDENTIARY ISSUES

4. There was insufficient evidence to find Leahy liable under 12.56.130.

5. The City of Salt Lake brought action to enforce an "implied contract" and the Court erred in determining that Leahy was liable, without evidence that he was the person who entered into that contract.

6. There was insufficient evidence of damage to support a finding of damage to Salt Lake City, in the amount of \$7.00.

### Standard of Review

Issues 4, 5 and 6 are issues relative to evidence before the lower Court and the interpretation placed upon them and therefore require this Court to apply the "clearly erroneous" Standard of Review and give "due regard" to the trial Court's ruling. Defendant is required to and will "marshall the evidence most favorable to the lower Court's ruling." (State v. Hurst, 821 P.2d 467, (Utah Ct.App. 1991)).

### DETERMINATIVE PROVISIONS, STATUTES AND RULES

#### CONSTITUTIONAL PROVISIONS

"No person shall be deprived of live, liberty or property, without due process of law."  
Utah Constitution, Article I, Section 7

"All courts shall be open, and every person ...shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from ... defending before any tribunal, any civil cause to which he is a party."  
Utah Constitution, Article I, Section 11

#### STATUTORY PROVISIONS

".... (2) The appeal to the circuit court is a trial de novo and shall be tried in accordance with the procedures of the small claims department, except a record of the trial shall be maintained. The decision of the trial de nov may not be appealed unless the court holds a statute or local ordinance unconstitutional."  
Utah Code Annotated, 78-6-10 1992)

".... The judgment of the small claims department ... is conclusive upon the plaintiff unless a counterclaim has been interposed. If the defendant is dissatisfied, he may,... appeal..."  
Utah Code Annotated, 78-6-10 (1986)

#### ORDINANCES

"...B. No person shall park any vehicle in any parking meter space, ... without immediate depositing in the parking meter contiguous to the space such lawful coin or coins of the United States as are required for such meter and designated by directions on the meter .....

C. No person, ... shall permit any vehicle parked by such person to remain parked in any parking meter space during any time when the parking meter contiguous to such space indicates that no portion remains of the period of which the last previous coin or coins has been deposited, or beyond the time limited for parking as designated on the meter."

Salt Lake City Ordinance, 12.56.150

"Whenever any vehicle shall have been parked in violation of any of the provisions of any ordinance prohibiting or restricting parking, the person in whose name such vehicle is registered shall be prima facie responsible for such violation and subject to the penalty therefor."

Salt Lake City Ordinance, 12.56.530

"Whenever any vehicle shall have been employed in the unauthorized use of streets, the person in whose name such vehicle is registered shall be strictly liable for such unauthorized use and the penalty therefor."

Salt Lake City Ordinance, 12.56.56

#### STATEMENT OF THE CASE

##### NATURE OF THE CASE

This is an appeal from a civil judgment wherein Leahy was found liable to Salt Lake City in the amount of \$33.00. Leahy is

contesting the constitutionality of city ordinance under which he was found liable.

#### COURSE OF PROCEEDINGS

The case was originally tried in the Small Claims Division of the Third Circuit Court, Salt Lake City Department on February 26, 1992, finding Appellant (hereinafter "Leahy") liable to the Defendant in the amount of \$118.00 and was appealed to the Third Circuit Court, due to the unconstitutionality of the ordinance under which liability was established.

#### DISPOSITION IN LOWER COURT

The Circuit Court found Leahy liable to the Plaintiff (hereinafter "Salt Lake City") in the amount of \$33.00. Leahy appeals again, challenging the constitutionality of the ordinance, under which he was found liable.

#### FACTS

1. On or about October 27, 1990, a car was parked in a metered location. That car was registered to Leahy, and at some point the meter expired and was ticketed.

2. Salt Lake City filed a Small Claims Affidavit and Order on March 11, 1991 and was served upon Leahy on January 11, 1992. Trial was scheduled for February 26, 1992. This affidavit

specifically stated that Leahy had violated Salt Lake City Ordinance 12.56.130 and claimed Leahy's liability was imposed pursuant to Salt Lake city Ordinance 12.56.530, as the registered owner of the vehicle.

3. Leahy appeared in Small Claims Court and contested the constitutionality of Salt Lake City Ordinances 12.56.130 and 12.56.530 which were the basis of the Affidavit and Order. Judgment for Salt Lake City was entered in the amount of \$118.00.

4. Leahy appealed the judgment and a Trial de novo was held in the Circuit Court, Leahy again contested the constitutionality of the Ordinances and the sufficiency of the evidence against him. Salt Lake argued that Salt Lake City Ordinance 12.56.560 additionally created liability on Leahy's part.

5. Judgment was entered against Leahy in the amount of \$33.00, Circuit Court Judge McCleve stating that she believed that Salt Lake City Ordinance 12.56.530 and 12.56.560 imposed a liability on Leahy and that such ordinances, which applied only a civil penalty, were constitutionally valid.

#### SUMMARY OF ARGUMENT

Evidence of ownership of a vehicle is not sufficient evidence of liability under what is in actuality a lawsuit to enforce an implied contract. Salt Lake City (hereinafter "the City") suffered damage only in the amount it was deprived,

through failure to deposit coins for whatever period of time the vehicle was parked there. The City has no power to enact ordinances which create a liability based solely on ownership of the vehicle and such an ordinance, besides being outside of the City's constitutional and statutory powers, also violates the constitutional requirements of due process.

The City has chosen the forum in which it wished to proceed in this matter. Leahy does not have the same choice. If it is true that the ordinances complained of are unconstitutional, the City gets the benefit of enforcing these same ordinances without, the Defendants named in such suits, having adequate redress.

#### ARGUMENT

Utah Code Annotated, 78-6-10 (1992) is unconstitutional in that it violates the Defendants right to seek redress through the Court system and gives Plaintiffs an unfair advantage by allowing them the ability to collect monetary damages, under an unconstitutional ordinance, simply because they may pick the forum in which to proceed.

The present amendment of this Utah Code has not been tested in the Courts. However, the previous version Utah Code Annotated, 78-6-10 (1986) which prevented the Plaintiff, in a Small Claims action, from appealing unless a Counterclaim was interjected, was tested for constitutionality.

In the case of Liedtke v. Schettler, 649 P.2d 80 (Utah 1982), the Utah Supreme Court stated that this limitation was not unconstitutional because:

"...Plaintiff has the choice of filing his complaint in the small claims court, the circuit court, or the district court, all of which would have concurrent jurisdiction in this matter..."

The same logic applies in this matter, since the current statute prevents an appeal from a trial de novo "unless a statute or ordinance is found to be unconstitutional."

It is difficult to imagine a case in which a challenge to the constitutionality of a statute or ordinance would be asserted, in a small claims matter, except as a defense to a claim. Therefore, if a statute or ordinance were to be found unconstitutional, it would be to the benefit of the defendant and he would not be likely to appeal. However, it would be to the detriment of the Plaintiff and he would be more likely to appeal causing the Defendant additional expense.

Conversely, should the state or ordinance be, in fact unconstitutional, the Plaintiff has the added benefit of being able to collect an unjust award, simply because he choose to begin in Small Claims Court. The Defendant, in such circumstances might wish to originally defend in the Circuit Court, from which he can seek a constitutional review by the Court of Appeals, but he has no choice in the matter and redress becomes impossible.

**This limitation of the Defendant's right to seek redress clearly violates the Utah Constitution, Article 1, Section 11.**

In criminal matters, this Court and the Utah Supreme Court have held that the limitation placed on appeals from trials de novo from justice courts, pursuant to Utah Rules of Criminal Procedure, Rule 26(13)(a) is constitutional. That Rule declares that the "decision of the circuit court is final except when the validity or constitutionality of the statute or ordinance is raised in the justice court." (Monticello v. Christensen, 788 P.2d 513 (Utah 1990), 769 P.2d 853 (Utah Ct.App. 1989)). The issue in these matters becomes whether or not the Defendant had raised the constitutionality or validity of the statute or ordinance. The same application is required in civil matters in order to protect the Defendant's rights to due process.

In this case, the Defendant did challenge the constitutionality of the ordinances imposing liability on him, in both the lower courts. (See Transcript, pages 22-24). The Court found the ordinances constitutional (See Transcript, pages 25-26), and found Leahy liable, based upon those ordinances.

Now, by virtue of Utah Code Annotated, 78-6-10 (1992), Leahy may be required to pay a judgment entered under an ordinance which is unconstitutional. The City obviously picked it's forum wisely, in order to continue to collect fees under an ordinance which cannot be challenged in the only Court which can declare it invalid. It recognizes that only the appellate Courts can strike



it down (See Transcript, page 24), and has the benefit of a statute which prohibits that very review.

Therefore, this Court should declare Utah Code Annotated, 78-6-10 to be unconstitutional and review the constitutionality of Salt Lake City Ordinances 12.56.530 and 12.56.560.

**Salt Lake City Ordinances 12.56.530 and 12.56.560 are unconstitutional in that establish a rule of evidence binding upon the Court and the City has no real or express power to enact such ordinances and the Court erred in ruling that Leahy was liable pursuant these ordinances.**

The leading case on the subject of the powers of cities to pass ordinances is Nasfell v. Ogden, 249 P.2d 507 (Utah 1952). In that case, the Defendant, in a criminal case for violation of Ogden's parking ordinances, sought a declaratory judgment "declaring the presence of a vehicle, parked in violation of any ordinance, on any public street in the city, prima facie evidence that the registered owner of such vehicle committed or authorized such violation" (emphasis added) was invalid. The Court did not distinguish between criminal and civil matters, but stated:

".... Cities in Utah derive their powers through express legislative grant...

Ogden assumes that because cities have been given the power to regulate streets and the parking of vehicles for a fee, together with the powers to enforce such powers, they necessarily have the implied power to pass an ordinance establishing a rule of evidence binding on the courts...Power to pass an ordinance establishing a rule of evidence binding on the courts is not granted to cities in express words, nor can it be fairly implied from, nor is it incident to, the powers expressly given..."

This case has become the accepted law on the subject. The only exception the Supreme Court has recognized is that ordinances can be passed to help enforce ordinances relating to the health, safety, morals and welfare of it's citizens, under the police powers granted to the cities by the legislature. (State v. Hutchinson, 624 P.2d 1116 (Utah 1980))

It can not be argued that collecting money on parking tickets effects the health safety, morals or welfare of it's citizens either directly or indirectly.

**An ordinance which creates liability on the basis of ownership of a car does not provide adequate due process, notice of wrongdoing sufficient to inform the person to be held liable, and opportunity to defend or correct and is therefore constitutionally defective.**

It is well settled law that due process demands that one have notice and opportunity to defend. For a statute to declare that the owner of the vehicle is automatically liable for the contractual duties the driver has entered into, without having to prove that the owner was the person who entered the contract, clearly denies him notice of the contract and opportunity to defend his position. Salt Lake City Ordinaces 12.56.530 and 12.56.560 are clearly in violation of the Utah Constitution, Article 1, Section 7.

**There was insufficient evidence to find Leahy liable under 12.56.130.**

Salt Lake City Ordinance 12.56.130 clearly states that "no person" shall park a vehicle in violation of the parking ordinances or "allow" that vehicle to remain after the meter has expired. The evidence presented at trial did not include a description or an identification of Defendant as the person who parked the car or allowed it to remain there past the time allowed on the meter. (See transcript, pages 9-10). The City relied upon the liability established in Salt Lake City Ordinances 12.56.530 and 12.56.560 in order to establish their case against Leahy.

**The City of Salt Lake brought action to enforce an "implied contract" and the Court erred in determining that Leahy was liable, without evidence that he was the person who entered into that contract.**

Black's Law Dictionary, 6th Edition, 323 defines an implied contract as:

"... one inferred from conduct of parties and arises where plaintiff, without being requested to do so, renders services under circumstances indicating that he expects to be paid therefor, and defendant, knowing such circumstances, avails himself of the benefit of those services. Chem-Tronix Laboratories, Inc. v. Solocast Co., A.D., 5 Conn.Cir 533, 258 A.2d 110, 113. It is an agreement which legitimately can be inferred from intention of parties as evidenced by circumstance and ordinary course of dealing and common understanding of men. Martin v. Little, Brown, & Co., 304 Pa.Super. 424, 450 A.2d 984, 987."

It is commonly understood that one who parks by a meter is to deposit coins. Thus the City provides convenient parking

spaces for a fee, and one who parks in those spaces is expected to deposit the fee. Therefore, whosoever parks at a metered parking space, enters into an implied contract with the City.

The question becomes, who entered into the space and the agreement? The vehicle could not have entered into the agreement, it is an inanimate object. The person who parked in the space would be the party who contracted for services. If the vehicle was parked by someone other than the Defendant, it would be that person who entered the contract. The City must then demonstrate that the Leahy knowingly entered into the contract. They have not done so.

**The was insufficient evidence of damage to support a finding of damage to Salt Lake City, in the amount of \$7.00.**

The City's charge for parking in their parking space is 25 cents per half hour, or 50 cents per hour. There is no argument that the meter was expired. The question of damage then must be established by proving how long the vehicle was parked without depositing coins and that further, the City could have reasonably expected to rent that space to someone who would have paid the appropriate fee. They might, alternatively, prove that it costs them x amount of dollars to put overtime notices on the car. The City did not produce any such evidence, and relied solely upon the statement that the "[if] paid within seven days, fine was \$7.00" without showing any damage. (See transcript, page 7.)

### EVIDENCE MARSHALLED

The evidence before the Court was:

1. A vehicle registered to Leahy was parked in a metered space past the time for which coins had been deposited.
2. The operator of the car was unknown.
3. Salt Lake City Ordinances imposed liability on the owner of the vehicle.
4. The "fine" for violation of parking ordinances (imposed by Salt Lake City) is \$7.00.
5. Letters had been sent to Leahy, telling him of the parking violation.

No other evidence was presented to the Court. This evidence is clearly insufficient pursuant to Salt Lake City Ordinance 12.56.130. It does not establish any standard of damage nor does it prove liability on Leahy's part.

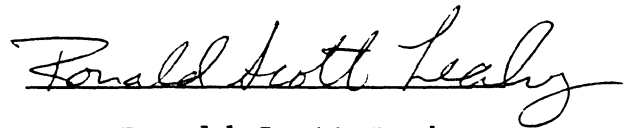
### CONCLUSION

Salt Lake City is being wrongfully enriched by virtue of an uncostitutional statute, and is being aided by the limitation on the right to appeal from the Small Claims Court. Salt Lake City choses the forum to pursue its claims, establishes the standard to prove liability and arbitrarily sets the damage amount without having to prove anything other than the ownership of the car. Non governmental plaintiff's in civil matters are not given the same advantages, nor should Salt Lake City.

WHEREFORE, Leahy moves the Court to reverse the judgment granted against him in the Small Claims Court by virtue of the unconstitutionality of the ordinances under which he was found liable.

DATED this 18<sup>th</sup> day of September 1992

Respectfully submitted,



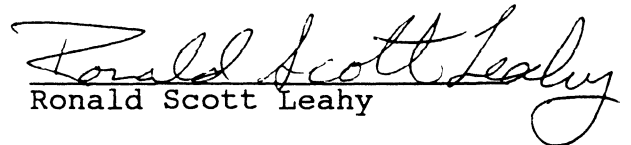
Ronald Scott Leahy

CERTIFICATE OF SERVICE

I certify that FOUR true and correct copies of the foregoing BRIEF OF APPELLATE was served upon the opposing counsel via U.S. Mail, first class postage prepaid and address to:

MARSHA S. ATKIN #5246  
451 South 200 East, #125  
Salt Lake City, Utah 84111

on the 18th day of September, 1992.



Ronald Scott Leahy